IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 796 of 2000
Date of decision: 22.8.2007

Smt. Vir Kaur ...Appellant

Versus

Rikhi Ram and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. RS Mittal, Senior Advocate with
Mr. Atul Gaur, Advocate, for the
appellant.

Mr. C.B . Goel, Advocate with
Mr. T.L.Garg and Mr. Akshat Goel, Advocates.

Mr. Anil Rathee, Additional Advocate General, Haryana.

K.S.GAREWAL, J.

This second appeal has been filed by Vir Kaur who was the unsuccessful defendant 2 in suit instituted on November 11, 1991 (Civil Suit 843 of 1991). Gram Panchayat, Dhandhota through its Sarpanch was defendant No.1 while Vir Kaur's brother Bajinder Singh was defendant 3 in the said suit.

The suit had been filed by Rikhi Ram and four others in representative capacity under Order 1 Rule 8 of the Code of Civil Procedure and was filed principally to challenge the judgment and decree of the learned Subordinate Judge, Kaithal dated November 13, 1973 in Civil Suit 1391 of 1973 entitled entitled Bijender Singh and Vir Kaur Versus Gram

Panchayat. The plaintiffs' claim was that the decree had been obtained by the plaintiffs in collusion with the members of the Gram Panchayat and should be declared void.

The Gram Panchayat appeared and admitted the claim of the plaintiffs to the extent that the judgment and decree dated November 13,1973 was illegal, no resolution had been passed by the Gram Panchayat to authorize Bishna to admit the claim of the plaintiffs.

Vir Kaur and Bajinder Singh contested the suit and pleaded that the plaintiffs had no locus standi to file the suit, the suit was barred by limitation and was not maintainable. It was further pleaded that the decree in question had been upheld by this Court in CWP 5922 of 1975, CWP 661 of 1983 and in RSA 1707 of 1987. The suit was barred under Order 2 Rule 2 CPC.

The learned Trial Court framed the issues, recorded oral evidence and received the documentary evidence as well. The foremost issue before the learned Trial Court was, whether the plaintiffs had been parties to the previous litigation and whether the suit was barred by the principle of res-judicata. The learned Trial Court found both these issues in favour of the plaintiffs and against the defendants (appellant 1 and respondent 6). The issue with regard to the judgment and decree dated November 13, 1973 being liable to be set aside was also decided in favour of the plaintiffs. The suit was held not barred by limitation nor barred under Order 2 Rule 2 CPC, was not an abuse of process of law, was properly valued for the purpose of court fee and jurisdiction and was maintainable. The suit was decreed with costs on September 20, 1994 and the declaration was issued in favour of the plaintiff declaring that the judgment and decree

dated November 13, 1973 passed in Civil Suit No. 1391 of 1973 entitled Bajender Singh etc. Versus Gram Panchayat was void and did not confer any right on defendants 2 and 3 (decree-holder in the said suit) as the same was a result of fraud, collusion, mis-representation and based upon forged and fabricated documents.

The judgment and decree of the Trial Court was challenged by Bajinder Singh and Vir Kaur in appeal before the learned Additional District Judge, Kaithal. The appeal was dismissed on February 3, 2000 by the learned Additional District Judge, Kaithal, leading to the filing of the present appeal.

According to the learned senior counsel appearing on behalf of the appellants, the impugned decree had been upheld by this Court as well as by the Apex Court on three earlier occasions, therefore, those judgments would operate as res judicata. The first judgment was of this Court in CWP 5922 of 1975 decided on September 10, 1979. In the said case the decree dated November 13, 1973 was upheld. The second judgment on which reliance was placed was CWP 661 of 1983 entitled **Bajinder Singh and others Versus The Assistant Collector Ist Grade, Guhla and others** decided on January 13, 1983 reported in **1983 P.L.J. 116.** The third litigation was commenced when two residents of village Dhandhota filed Civil Suit 661 of 1983 under Order 1 Rule 8 CPC. The suit was for permanent injunction to restrain the defendants (Bajinder Singh and Vir Kaur) from changing the use of the land in question and for declaring the decree in Civil Suit No. 1391 of 1973 to be no-nest and void. The learned Trial Court on September 30, 1985 dismissed the suit on various grounds. The appeal filed by the unsuccessful plaintiffs was dismissed by the learned

Additional District Judge, Kurukshetra on April 13, 1987.

At the outset, the exact nature of the pleas raised by the plaintiffs deserve to be noticed.

According to the plaintiffs, 181 kanals 10 marlas in Dhandhota had been reserved as a grazing ground under the consolidation scheme for pasture. The land had not been reclaimed or cultivated until 1972-73. Vir Kaur and Bajinder Singh, in collusion with the Panchayat, filed Civil Suit 1391 of 1973 on November 7, 1973. Bishna Ram appeared and admitted their claim, the Subordinate Judge, Kaithal immediately decreed the suit on November 13, 1973. The said Bishna Ram was a member of the panchayat who had not been authorized by the Panchayat to appear in the case. The plaintiffs in that case were not proprietors of Dhandhota and had never cultivated the land.

At this stage, the plaint on the basis of which the impugned decree was passed, may be perused. Bajinder Singh and Vir Kaur had pleaded that they were in cultivating possession of 181 kanals and 10 marlas of land, they did not pay rent to anyone, being co-sharers in the shamlat deh, the land did not vest in the Gram Panchayat, in Dhandhota shamlat-deh measures more than 1/4th of the khewat land, the panchayat could not claim more than 1/4th as shamlat, the plaintiffs were proprietors of the village (biswedars) and were in continuous cultivating possession of the land since before January 26, 1950 and the land was not in excess of their shares. The plaintiffs also claimed ownership by way of adverse possession by virtue of cultivating possession over 12 years and by asserting their own hostile title adversely and openly. The panchayat was threatening to dispossess the plaintiffs on the basis of an illegal entry in the column of ownership in the

revenue record, the panchayat had repeatedly been requested to admit the plaintiffs' claim as owner but it had refused to do so, hence the plaintiff filed suit for declaration and claimed that they are owners in possession of the suit land. The plaint was signed on November 3, 1973, presented before the Subordinate Judge, Kaithal on November 6, 1973. It was taken up on November 7, 1973. On November 13, 1973 Bishna Ram Sarpanch appeared and filed his written statement admitting the contents of the plaint as correct, the learned Subordinate Judge recorded the statement of Bishna Ram and decreed the suit on November 13, 1973.

The suit was obviously collusive.

The decree in question was used as a defence by the decree-holder (Bajinder Singh and Vir Kaur) whenever proceedings were filed against them. This Court in CWP 5922 of 1975 had dismissed the challenge to the decree, by dismissing the petition, therefore, the learned counsel argued that the decree had been upheld.

Later this Court again heard the matter in Bajinder Singh's case (supra). The petition was dismissed leading the learned counsel to again utilize this dismissal as a ground to support the decree.

Reference was made to **Supreme Court Employees Welfare Association** v. **Union of India and others** AIR 1990 Supreme Court 334 and **State of Punjab and others** v. **Gurdev Singh, Ashok Kumar** AIR 1991 Supreme Court 2219. Reference was also made to **Teja Singh** versus **The Union Territory of Chandigarh** 1982 Punjab Law Reporter 160 in support of the proposition that the Code of Civil Procedure was applicable to writ jurisdiction and judgments passed in writ petitions could operate as res- judicata in civil suits.

On behalf of the respondents, the main argument was that the decree dated November 13, 1973 was null and void and it had been obtained through collusion (fraud). None of the earlier judgments in collateral proceedings had directly upheld the decree. Although those petitions were dismissed, yet dismissal would not amount to saying that the decree was valid and sustainable.

The principle of law laid down by the Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath** 1994 (1) Supreme Court Cases 1 has been recently reiterated in **A.V. Papayya Sastry and others** versus **Govt. of A.P. and others** 2007 (4) Supreme Court Cases 221. The Supreme Court in S.P. Chengalvaraya Naidu's case (supra) held that a judgment and decree obtained by playing fraud was a nullity and had to be treated as nullity by every Court. It could be challenged in any court, even in collateral proceedings. In A.V. Papayya Sastry's case this principle was reiterated in the following terms:-

> "It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order--by the first court or by the final court-- has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

The Supreme Court had also defined fraud as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another.

It is not at all difficult to see that a decree declaring the plaintiffs to be owners in possession of nearly 22 acres of land (181 kanals 10 marlas) belonging to the Gram Panchayat, obtained in a week, on the basis of the admission made by one of the members of the panchayat, who was not even authorized to appear before the Court and make the statement, can be nothing but collusive and fraudulent. Here the acts of the parties cannot be better described except by saying that they had colluded with each other with the sole object of taking over 22 acres of common land and it was an act of deliberate deception to secure undeserved benefit by taking undue advantage of the Panchayat represented by a panch and cause loss to the panchayat. No amount of reference to this decree in subsequent proceedings and failure to see through the act, ignoring its collusive and fraudulent nature, would amount to any form of actual and constructive res judicata.

Both the courts below have concurrently found that the decree was the result of fraud, was collusive, obtained by mis-representation etc. The learned Additional District Judge had while concluding also relied on S.P. Chengalvaraya Naidu's case (supra) and dismissed the appeal. No amount of technical objection, legal hyperbole or semantics can help the appellant to over come the findings recorded by the courts below.

This appeal is without merit. Dismissed.

22.8.2007 **(K.S. GAREWAL)**
prem **JUDGE**